IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C.No.3248/2002

Sumac International(P) Ltd. .....Petitioner
! through: Mr.Sanjeev Rajpal, Advocate

VERSUS

$ Inspecting Assistant Commissioner
(Assessment) Range XXIII, Income Tax
Department, New Delhi .....Respondents
^ through: None

Crl.M.C.No.307/2003

P.K.Sharma & Ors. .....Petitioner
! through: Mr.Sanjeev Rajpal, Advocate

VERSUS

$ Inspecting Assistant Commissioner
(Assessment) Range XXIII, Income Tax
Department, New Delhi .....Respondents
^ through: None

% DATE OF DECISION: 22-10-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J. (Oral)

1. Petitioners have been impleaded as accused in a complaint filed by Shri A.K.Fotedar, Inspecting Assistant

Commissioner, Income Tax Department, Government of India under Section 276(B) of the Income Tax Act.

2. Petitioner of Crl.M.C.No.3248/2002 is accused No.1. Petitioners of Crl.M.C.No.307/2003 are the Directors of the first accused, i.e. the company.

3. Gravement of the allegations in the complaint are that pertaining to the assessment year 1983-84, the company and its Directors violated the provisions of the Income Tax Act pertaining to deduction of tax at source, in that, Rs.2,25,690/- which had to be deducted as tax at source under Section 195 (1) of the Income Tax Act was not fully deposited in the treasury and only Rs.86,340/- was deposited with the Treasury.

4. According to the petitioners the tax at source had to be deducted and deposited only at the time of making payment and not when money was credited to the account of the person to whom it was to be paid and that in respect of the transaction in question it had to pay royalty to a foreign national. For the assessment year in question, total royalty payable was Rs.6,42,376/-. 40% of the royalty had to be deducted at source, i.e. Rs.2,25,690/- had to be deducted. That the Reserve Bank of India did not give permission to remit the money to the foreign company and hence notwithstanding the company having credited Rs.6,42,376/- payable towards royalty since none was actually paid, nothing had to be paid to the Government

Treasury. Petitioners explain having deposited Rs.86,340/- as an erroneous deposit of tax at source at their end.

5. Section 195 (1) of the Income Tax Act, 1961 as existing in the assessment year 1983-84 reads as under :-

> "195 (1) Any person responsible for paying to a non-resident, not being a company, or to a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India, any interest, not being "Interest on securities", or any other sum, not being dividends, chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay any income-tax thereon as an agent, deduct income-tax thereon at the rates in force:
>
> Provided : * * * * * * * * *
>
> Provided further : * * * * * * * * *"

6. The aforesaid provision was amended in the year 1987. As amended, Section 195(1) reads as under :-

> "195. (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest on securities) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force.
>
> Provided * * * * * * * * *
>
> Provided further * * * * * * * * *"

7. A bare perusal of Sub-Section 1 of Section 195 as it existed in the assessment year 1983-84 reveals that tax had to be deducted at source at the time of making payment to the payee. In 1987, the

provision was amended making it mandatory to deposit with the Income Tax authorities the tax at source at the time amount was credited to the account of the payee.

8. In the complaint filed by Income Tax authorities there is no averment that the accused persons made any payment to M/s. Fabcon Inc., the foreign company to whom royalty was payable. Only averment is that the accused company debited Rs.2,25,690/- as the royalty payable to said American Company.

9. In that view of the matter, in view of the legislative provision in force as of the assessment year 1983-84, ex-facie, no offence has been disclosed as having been committed by the petitioners.

10. I thus dispose of the petitions quashing the order dated 19.2.2001 passed by the learned Metropolitan Magistrate summoning petitioners to face trial. I also quash criminal complaint being Complaint No.1783/1987.

11. No costs.

October 22, 2007 **PRADEEP NANDRAJOG, J.**
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